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In The

Supreme Court of the United States

October Term, 1972

Nos. 72-549 and 72-550

SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,
Petitioners,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,
Respondents.

CAROLYN BRADLEY, ET AL.,
Petitioners,

v.

STATE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS FOR THE FOURTH CIRCUIT

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BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS FOR THE FOURTH CIRCUIT

For the reasons hereafter stated, the respondents respectfully submit that this Court should deny the petitions for writs of certiorari in this case.

OPINIONS BELOW

The opinions in the Court of Appeals for the Fourth Circuit are reported at 462 F.2d 1058 and are printed in the Petitioners' Appendix at pp. 557a-602a. The opinion of the District Court for the Eastern District of Virginia is reported at 338 F.Supp. 67 and is printed in the Petitioner's Appendix at pp. 164a-545a.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The petitions were timely filed pursuant to ex parte orders extending the time for filing entered by Mr. Justice Douglas and Mr. Justice Marshall.

QUESTIONS PRESENTED

1. Whether the Court of Appeals for the Fourth Circuit erred in holding that the District Court could not compel the joinder of three separate school systems—each already operating a unitary school system, the boundaries of which, under state law, are co-terminous with long-standing city and county lines—where the sole purpose and effect of the proposed joinder was to assure a white majority in each city school of not less than 60% and not more than 80%?

2. Whether the Constitution or any decisions of this Court require that a unitary city-wide school system be reconstructed by adding to it two unitary county-wide school systems in order to assure a white majority in each city school?

3. Whether the Constitution or any decisions of this Court require the obliteration of centuries-old boundary lines between the Counties of Henrico and Chesterfield and the

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ity of Richmond solely to assure white-majority schools in
ıe City of Richmond, when these lines are not, were not,
ıd never have been manipulated to inhibit desegregation
r to promote segregation?

CONSTITUTIONAL AND STATUTORY PROVISIONS

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. *U.S. Const. amend. XIV, § 1.*

* * *

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. *U.S. Const., amend. X.*

STATEMENT

The City of Richmond, the County of Henrico, and the ounty of Chesterfield are local government units within the ommonwealth of Virginia.[1] They have a history dating ack two and one quarter centuries. Henrico County was eated in 1634; the City of Richmond in 1742; Chesterfield ounty in 1749. In the interim, the City of Richmond has

[1] "In Virginia, cities and counties are mutually exclusive. The area ıbraced within a city's limits is not a part of a county. Cities expand the expense of the territory of an adjacent county, and Virginia has ovided a judicial procedure as the means for extending the limits of ies." *Holt* v. *City of Richmond*, 459 F.2d 1093 (4th Cir. 1972).

enlarged its territory by annexation on eleven different occasions, most recently in 1970. These annexations were the only governmental actions affecting the racial composition of the school systems. Their effect has been to increase the percentage of the white population within the City of Richmond.

These three political subdivisions are charged with the general functions of local government within their geographic boundaries. Each governing body is elected by popular vote and exercises the power to tax to provide revenues for all governmental functions, including the function of public education which has been a local charge since 1871. The school systems that are the concern of this case are administered by appointed school boards and are not fiscally independent school districts. Each school system is part and parcel of the respective county or city with which its boundaries are co-terminous.[2]

This case derives from an attempt to dismantle these three unitary school systems, to separate each from its local government, and to create a new and distinct school system which would be financially dependent upon three (3) separate local governments and would be so large as to be in the top 0.2% of all school systems in the United States. The ostensible excuse for this requirement that the state restructure its internal government was to "desegregate" the schools of Richmond, for that was the extent of the charge to the federal courts by this Court in the series of cases beginning with *Brown* v. *Board of Education*, 347 U.S.

[2] *"Virginia's school divisions differ from those of most other states in their fiscal dependence; that is, the lack of independent authority to tap local sources of revenue for school purposes.* Their annual budgets and authorizations for issuance of bonds for capital outlay must receive the approval of local boards of supervisors." *1 Virginia Educational Needs Assessment Study 336 (1970).* (Richmond Ex. 69)

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483 (1954), and culminating in *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1 (1971), *reh. denied,* 403 U.S. 912 (1971).

The fact is, however, that Richmond schools and the Chesterfield and Henrico schools had already been desegregated—they were and are operating as unitary systems—unless by "desegregation" is meant a school system in which there must be a white majority, both in the system and in each school within the system. Indeed, the announced objective of the district court was to do more than require a simple white majority. To satisfy its notions of "desegregation"—usually transmogrified into "a viable racial mix"—it would require a white majority of no less than 60% and no more than 80% in each school within the system.

It was this Court ordered plan for "a viable racial mix"—for large white majorities in each school—that the Fourth Circuit rejected and that this Court is asked to restore. We submit that an order for white majorities in all schools is not only not mandated by the Constitution or by this Court but would in fact violate the Constitution and the judgments of this tribunal.

This litigation originated in 1961 to desegregate the public schools of the City of Richmond, at a time when those schools were operated as a dual system. It was not until the City of Richmond was faced with an order to effect a unitary system, which would result in predominantly black student bodies in virtually every school in Richmond, that the City sought to secure an amalgamation of its school system with the unitary school systems of the adjoining counties. It is not insignificant that the plan which the Fourth Circuit struck down as unwarranted was originally proposed by Richmond, with its majority white voting population and predominately white government, and not by the plaintiffs who, over a decade of bitter opposition by the

City, had sought the desegregation of the Richmond schools.

The background of the case with which we are concerned here starts in 1970, with the request for further relief by black plaintiffs against the City of Richmond, in a case to which these respondents were not even parties. The district court found that Richmond was not operating a unitary system but concluded that a plan proposed by the plaintiffs and limited to the City would remedy that defect. That plan, known as the Foster Plan, was not effected in 1970-71 because the trial court found that adequate transportation would not be available in time for the 1970-71 school year.

Concerning the Foster Plan, the trial court then said:

> Through Dr. Foster the plaintiffs proposed a plan described below, which the Court finds would result in a unitary system. *Bradley* v. *School Board of Richmond*, 317 F.Supp. 555, 568 (E.D. Va. 1970).
>
> The Court therefore concludes:
>
> * * *
>
> 2. That the plaintiffs' plan would, if adopted, create a unitary system.
>
> * * *
>
> 4. That while racial balance is not required in each and every school in the system, there is no intractible remnant of segregation in the City of Richmond school system since all parts of the city can be reached by virtue of reasonable amounts of transportation, both as to distances, times and sums involved.
>
> The Court further finds that the adoption of a plan such as suggested by Dr. Foster may well not only create a unitary system, but do much toward the thwarting of resegregation of schools once the unitary system has been put into effect. (317 F.Supp. at 576)

The City of Richmond subsequently proposed a unitary plan of its own, also limited to the City's geographical

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boundaries, known as plan 3,[3] which modified the Foster Plan and was chosen by the district court as the more appropriate program because, while it too would effectuate a unitary system, there were other advantages that it would also secure. As the trial court said: "Although operation under either plan would fulfill the School Board's legal duty, it would be fully justified in preferring plan 3 on the basis of whatever administrative or educational reasons it finds persuasive." *Bradley* v. *School Board of Richmond*, 325 F.Supp. 828, 846 (E.D. Va. 1971). This unitary system was ordered to begin with the 1971-72 school year and, indeed, went into effect.

It was only after approval of the Foster Plan that the City of Richmond came forward with its gerrymandering proposal to bring Henrico and Chesterfield Counties into a single school system. What its motives were can only be surmised. Nevertheless, it was at the same time that, in a class action suit brought by and on behalf of blacks, the trial judge in this case said of the most recent annexation of territory by the City of Richmond: "The Court finds that the primary reason [for the annexation agreement] was in order to assure an unquestioned White majority for the upcoming Councilmanic Elections." *Holt* v. *City of Richmond*, 334 F.Supp. 228, 236 (E.D. Va. 1971). Whatever its motives, the effect of the plan would have been to borrow white children from Chesterfield and Henrico so that the white school children of the City of Richmond would be assured of attending schools in each of which there would be a substantial white majority.

At the trial, the district court heard evidence in support of the City's plan for the gerrymander of the three school systems in order to assure a white majority, a plan in

[3] Plans 1, 2 and 3, numbered in order of Richmond's preference for each, were offered simultaneously. The district court found that Plans 1 and 2 failed to establish a unitary system. (App. 116a-117a)

which the district court had earlier indicated its interest. The testimony in support of the plan came primarily from Dr. Little, Richmond's associate superintendent of schools, who wrote it and from Dr. Pettigrew and others who had persistently offered the view that a "viable racial mix" required a white majority of from 60 to 80 percent in every school. Pettigrew's position, which was adopted by the district court, had been roundly denounced by Judge Sobeloff in one of the earlier cases in which the Pettigrew thesis had been put forward:

> The linch-pin of the dissent is the notion that, ideally, the goal of desegregation should be to achieve an "optimal mix," consisting of a white majority. It suggests, as did Dr. Pettigrew in his testimony in *Brewer v. School Board of City of Norfolk* (434 F.2d 408) (4th Cir. 1970), that desegregation should not go so far as to put whites in minority situations. In *Brewer* we gave short shrift to the Board "principles" fashioned largely from Dr. Pettigrew's testimony. Summary treatment is all it deserved.
>
> * * *
>
> Since the dissent has seen fit in this case to revive the spectre of the Pettigrew thesis, previously cast aside, I cannot let the matter pass without comment. This is no mere issue of expert testimony. It is no mere question of "sociology and educational theory." There have always been those who believed that segregation of the races in the schools was sound educational policy, but since *Brown* their reasoning has not been permitted to withstand the constitutional command. When the underpinnings of the white majority proposal are exposed, they seem to constitute a direct attack on the roots of the *Brown* decision. The minority's readiness even to entertain the idea reflects, I respectfully submit, a profound misunderstanding of the social and constitutional history of this nation and the Negro people.
>
> * * *

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The invidious nature of the Pettigrew thesis, advanced by the dissent in the present case, thus emerges. Its central proposition is that the value of a school depends on the characteristics of a majority of its students and superiority is related to whiteness, inferiority to blackness. Although the theory is couched in terms of "socio-economic class" and the necessity for the creation of a "middle-class milieu," nevertheless, at bottom, it rests on the generalization that, educationally speaking, white pupils are somehow better or more desirable than black pupils.

* * *

But school segregation is forbidden simply because its perpetuation is a living insult to the black children and immeasurably taints the education they receive. This is the precise lesson of *Brown*. Were a court to adopt the Pettigrew rationale it would do explicitly what compulsory segregation laws did implicitly. *Brunson* v. *Board of Trustees of School District No. 1 of Clarendon County, South Carolina*, 429 F.2d 820, 824, 826 (4th Cir. 1970) (Sobeloff, J., concurring, joined by Winter, J.).

There can be little doubt that the trial court did in fact apply the Pettigrew thesis in the formulation of the white-majority plan struck down by the Fourth Circuit. In his opinion, the trial judge stated:

> It should be pointed out that the Court in considering the testimony of the experts gives greater weight to those experts whose opinions were to the effect that equality of educational opportunity would flow from the consolidation of schools in the metropolitan area, and that the proposed plan is both reasonable and feasible, than to the testimony of those whose opinions differ. (338 F. Supp. at 115; App. 263a.)

That the judgment of the trial court rested on this "expertise" about the necessity for a "viable racial mix" is

attested by the language of the trial court throughout its opinion. It is perhaps best epitomized by the following quotations from that opinion:

> To achieve "integration," in Dr. Pettigrew's terms, one must have the "mix plus positive interaction, as we would want to say, between whites and blacks." Current research indicates that in order to achieve these benefits there is an optimum racial composition which should be sought in each school. Dr. Pettigrew placed this at from 20 to 40% black occupancy. These figures are not at all hard and fast barriers, but merely indicate to the racial composition range in which interaction of a positive sort is more likely to occur.
>
> * * *
>
> Based upon projected enrollments under the current assignment plan for Richmond city schools, very few students will be in schools with a black population of 20 to 40%. At the elementary level, 3.04% of the black students and 9.43% of the white students will be in such schools. In middle schools, 9.2% of blacks and 26.7% of whites will be in schools in that range. There will be no high school students in such schools.
>
> * * *
>
> If the Richmond metropolitan consolidation plan were implemented, 97% of black students in the area would attend schools in the range of 20-40% black; the remainder would be in 15-20% black schools. Under that plan 92.5% of the white students in the area would be in schools of the optimum mix determined by Dr. Pettigrew, and 7.5% would be in schools with a 15-20% black enrollment. (338 F. Supp. at 194-95; App. 437a-439a.)

Thus was the goal established—Dr. Pettigrew's formula; the deficiency in the existing systems was established—the failure to accommodate to Dr. Pettigrew's formula; and the means of accomplishing the goal was established—a mandate to conform to Dr. Pettigrew's formula.

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It is not surprising that the petitioners in this case have chosen to run away from the very bases on which the trial court judgment rested rather than rely on the thoroughly discredited theory of the "experts" who provided the rationale for the trial court's action.

In sum, the essential facts that should engage this Court's attention are these:

1. The school systems in the City of Richmond, and the Counties of Henrico and Chesterfield are unitary systems.

2. The three school systems are integral parts of the city and county governments upon which they are dependent for financing and are not separate, fiscally independent school districts.

3. The boundaries of the city and counties were not created nor have they been manipulated to further segregation or to prevent desegregation of any of the school systems.

4. The sole purpose and effect of the plan struck down by the Fourth Circuit was to assure substantial white majorities for children attending the Richmond schools.

ARGUMENT

The respondents respectfully submit that certiorari should be denied here because: (1) This case is *sui generis*. (2) The decision of the Fourth Circuit is in accord with and follows from all prior judgments of this Court. It is not in conflict with that of any other court of appeals.

I.

The Unique Nature Of The Case

The four decisive elements set out at the end of our Statement are those that distinguish this case from all others, decided and pending. The many decisions to which petitioners have made reference involve issues that are not and cannot be present in this case. It must be conceded, however, that if the remedy created by the district court were appropriate here, it would be appropriate anywhere.

1. *Busing.* Although massive busing is required in order to effectuate the district court's plan—and that busing would be totally segregated busing, with all black busloads moving out of the City of Richmond and all white busloads coming in—there is no challenge here to the propriety of busing within a school system in order to effect desegregation. See *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). The busing ordered by the district court here, however, was not to effect a unitary system but only for the purpose of securing a "viable racial mix": one that would assure white majorities in all schools. The distinction between busing for desegregation and busing for "racial balance" is one of which Justices of this Court have taken cognizance. See *Drummond* v. *Acree*, ... U.S. ..... (1972) (Powell, J.); *Board of Education of Oklahoma City* v. *Dowell*, ... U.S. ..... (1972) (Rehnquist, J.); *Kelley* v. *Metropolitan County Board of Education of Nashville, Tenn.*, ... U.S. ..... (1972) (Rehnquist, J.); *Guinn* v. *Kelley*, ... U.S. ..... (1972) (Douglas, J.); *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Salem Forsyth County Board of Education* v. *Scott*, 404 U.S. 1221 (1971) (Burger, C.J.).

2. *Unitary Systems.* In no other case has a school system or several school systems, each of which has dismantled

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a dual system and replaced it with a unitary system, been subjected to further mandate to effect a new plan with a "better racial balance." See *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

3. *Gerrymander.* This is not a case in which boundary lines between school systems have been drawn or revised with either the intent or effect of inhibiting desegregation of schools within the systems. See *United States* v. *Scotland Neck City Board of Education*, 407 U.S. 484 (1972); *Wright* v. *Council of City of Emporia*, 407 U.S. 451 (1972). The boundary lines here sought to be destroyed by the trial court have been essentially unchanged for two centuries and more. The school systems have each been an integral part of the local governments of the individual city and counties.

4. *Economic equality and administrative feasibility.* This is not a case in which there is a disparity between or among school systems so that one has a viable economic base and another does not, or where one is too small to operate efficiently if at all. *See Rodriguez* v. *San Antonio Independent School District*, 337 F. Supp. 280 (W.D. Tex. 1971), probable jurisdiction noted, 406 U.S. 966 (1972), argued 12 Oct. 1972, No. 71-1332; *United States* v. *Texas*, 321 F. Supp. 1043 (E.D. Tex. 1970), *aff'd in part*, 447 F.2d 441 (5th Cir. 1971). On the contrary, the tax base and expenditure per pupil in Richmond is slightly higher than that in either of the two counties and no question of their adequacy has been raised. Each of the three school systems is now, by reason of its size, among the largest in the country. Richmond and Henrico are in the upper 1.1% and Chesterfield in the upper 4.3% of all school systems in the country. The combined system would be in the top 0.2%.

5. *Attendance zones.* This is not a case of drawing lines for attendance districts within a school system, which has been the problem in most of the cases that have heretofore arisen. See *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Cisneros* v. *Corpus Christi Independent School Dist.*, 459 F.2d 13 (5th Cir. 1972) (No. 71-2397); *Keyes* v. *School District No. 1, Denver, Colorado*, 445 F.2d 990 (10th Cir. 1971), *cert. granted*, 404 U.S. 1036 (1972), argued 12 Oct. 1972. No. 71-507. Here there are three separate school systems, each of which has had its attendance zones demarked in a way that assures their operation as unitary systems.

6. *Local government units.* The school systems here are not separate entities with their own taxing power. They are instead integral parts of local governments, with local constituencies—each local government being concerned not only for the education of its citizens, but for their health, welfare and safety. The case involves not just a redrawing of school system lines but the extraction of the school systems from their local governmental structures and the separation of the school systems from their revenue bases.

II.

Controlling Precedents

1. *The merits.* The obligation to desegregate the public schools in areas that had been subject to de jure segregation was set out precisely and concisely in this Court's opinion in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). That obligation is to dismantle dual school systems and replace them with unitary systems. There the Court said:

> The constant theme and thrust of every holding from *Brown I* to date is that state-enforced separation of

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races in public schools is discrimination that violates the Equal Protection Clause. The remedy commanded was to dismantle dual school systems.

We are concerned in these cases with the elimination of the discrimination inherent in the dual school systems, not with myriad factors of human existence which can cause discrimination in a multitude of ways on racial, religious, or ethnic grounds. The target of the cases from *Brown I* to the present was the dual school system. (402 U.S. at 22).

The dual school systems in the City of Richmond, the County of Chesterfield, and the County of Henrico have been eliminated—the mandate of *Brown I* has been satisfied. The trial court, however, would insist that something more be accomplished by way of assuring white majorities in the schools of Richmond. This the Court, in *Swann*, stated was beyond the command of the Constitution.

If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole. (402 U.S. at 24).

* * *

At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in *Brown I*. The systems will then be "unitary" in the sense required by our decisions in *Green* and *Alexander*.

It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither

> school authorities not district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary. (402 U.S. at 31-32).

There are no cases, as this Court well knows, that suggest that after the dual system has been replaced by a unitary system further steps must be taken to secure a "viable racial mix" by way of a white majority.[4] That a white majority is not a requisite to the elimination of desegregation is also clear from this Court's opinion in the recent *Emporia* case, where the Court mandated a school system with a majority of blacks in approximately the same ratio as now obtains in the schools of the City of Richmond. *Wright* v. *Council of the City of Emporia*, 407 U.S. 451 (1972).

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[4] If that were a valid objective, then quite clearly the counties surrounding Henrico and Chesterfield would have as much right—and the District Court would have the duty—to secure by importation or merger the white students necessary to attain a "viable racial mix." The City of Richmond's Exhibits Nos. 52 and 52A, reproduced here as Addendum A, *post*, graphically demonstrate the unworkability of the trial court's proposal.

Ironically, New Kent County, under consideration by this Court in *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968), the case which gave rise to the 1970 request for further relief in the instant case, would be left with all majority black schools while Richmond used Henrico's white students to achieve its "viable racial mix."

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2. *The remedy.* Of course, in the absence of a predicate f constitutional violation, a predicate that is absent in his case, the question of a further remedy need not be con-idered. A remedy must be directed to a cure of a wrong. The wrong of segregation has been cured. A remedy here would be appropriate only if the failure to provide white-majority schools was a violation of the Constitution. But ne remedy suggested by the district court here is unaccept-ble under the authority of this Court's judgments.

It was exactly on a representation of want of a "viable acial mix" or "equal educational opportunity" that the ederal court in New Jersey was asked to redraw the county nd city lines established for school systems in that state. *pencer* v. *Kugler*, 326 F. Supp. 1235 (D. N.J. 1971). The ssence of the complaint in *Spencer*, as recited there by the istrict court, was almost identical with the essence of the omplaint lodged in this case:

> The schools . . . are racially imbalanced by reason of [a New Jersey statute] which sets school district boundaries thereby rendering racial balance mathematically impossible in many districts, thus providing unequal educational opportunities. The State has taken no steps to achieve racial balance by reason of the mathematical composition of the geographical area which comprises the school district, has not attempted to redraw school district lines to achieve racial balance, has not provided funds for compensatory education to overcome adverse educational effects of racial imbalance. The State has failed to act in the foregoing area in violation of the equal protection clause of the United States Constitution and the civil rights of the plaintiffs and the class they represent. The State is obligated to integrate all the schools or to provide compensatory education in those districts which it does not integrate. The school districts lacked the power to achieve racial balance. (326 F. Supp. at 1237).

The similarities between the facts alleged in the *New Jersey* case and the premises of the trial court's judgment here are patent. Neither the plaintiffs nor the city in their petitions come to grips with the decision in *Spencer*. So thoroughly does that decision emasculate their position that apparently they cannot bring themselves even to recognize its existence.

In *Spencer*, the three-judge court held that the relief, of the kind granted by the district court in Richmond, was beyond the competence of any federal court to order.

> It is clear that these legislative enactments prescribe school district boundaries in conformity with municipal boundaries. This designation of school district zones is therefore based on the geographic limitations of the various municipalities throughout the State. Nowhere in the drawing of school district lines are considerations of race, creed, color or national origin made. The setting of municipalities as local school districts is a reasonable standard especially in light of the municipal taxing authority. The system as provided by the various legislative enactments is unitary in nature and intent and any purported racial imbalance within a local school district results from an imbalance in the population of that municipality-school district. Racially balanced municipalities are beyond the pale of either judicial or legislative intervention. (326 F.Supp. at 1240).

It was this judgment that was affirmed by this Court in *Spencer* v. *Kugler*, 404 U.S. 1027 (1972), with only Mr. Justice Douglas dissenting.

There is no conflict between the decision of the Fourth Circuit here and any other Circuit. The judgment of District Judge Roth in Detroit is now pending on appeal in the Court of Appeals for the Sixth Circuit. *Bradley, et al.* v. *Milliken*, 40 U.S.L.W. 2841 (E.D. Mich. June 14, 1972), *appeal*

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pending, ... F.2d ..... (6th Cir. 1972) (No. 72-8002).[5] In In that case, the predicate to judicial intervention was a finding that Detroit was operating a dual school system. *Milliken* does not make any attempt to dismantle existing unitary systems to achieve a "better racial mix." Instead, Detroit is a school desegregation case in which a unitary system remained to be established. In this case, the school systems involved have already met the requirements of *Brown I* and *Swann* by the creation of unitary systems.

Implicit in the petitioners' argument is the proposition that the local government units, so long in existence in this country, are no longer efficient or desirable in our urbanized nation, ergo they are unconstitutional. They would substitute for cities and counties a series of metropolitan planning districts. With all respect, that reorganization of American government is appropriate neither for a district court nor even for this Court to decree.

On October 12, 1972, this Court heard argument on the question whether "petitioners are entitled to obtain system-wide relief to desegregate the Denver Public Schools." Brief for Respondents, at 2, *Keyes* v. *School District No. 1, Denver, Colorado, supra*. Certainly, with that as an open question, it is hard to conceive that this Court should usher in a new generation of school litigation by accepting the petitioners' assertion here that the Constitution requires extra-system relief where all the school systems in question are already operating unitary systems.

CONCLUSION

The Court ought not even to entertain the proposition offered by Petitioners here that schools with black majorities

[5] District Judge Roth's decision would seem to be inconsistent with the Sixth Circuit's more recent ruling in *Mapp* v. *Board of Education*, 41 U.S.L.W. 2207 (6th Cir. Oct. 11, 1972).

are intrinsically unequal to schools with white majorities. That proposition necessarily implies that black school children are inherently unequal to white school children. Acceptance of such proposition by this Court, as the quotation from Judge Sobeloff, *supra*, makes clear, would stand *Brown v. Board of Education*, on its head. Certiorari, therefore, should be denied.

Respectfully submitted,

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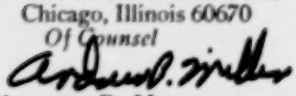

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CERTIFICATE

The undersigned, a member of the bar of this Court, hereby certifies that on the 3rd day of November, 1972, he served three (3) copies of the foregoing Brief in Opposition upon all counsel for all parties required to be served by depositing same in the United States mail, first class postage, prepaid, addressed as follows:

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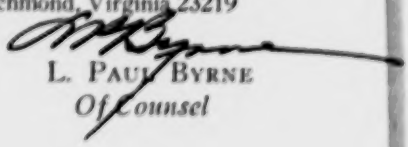

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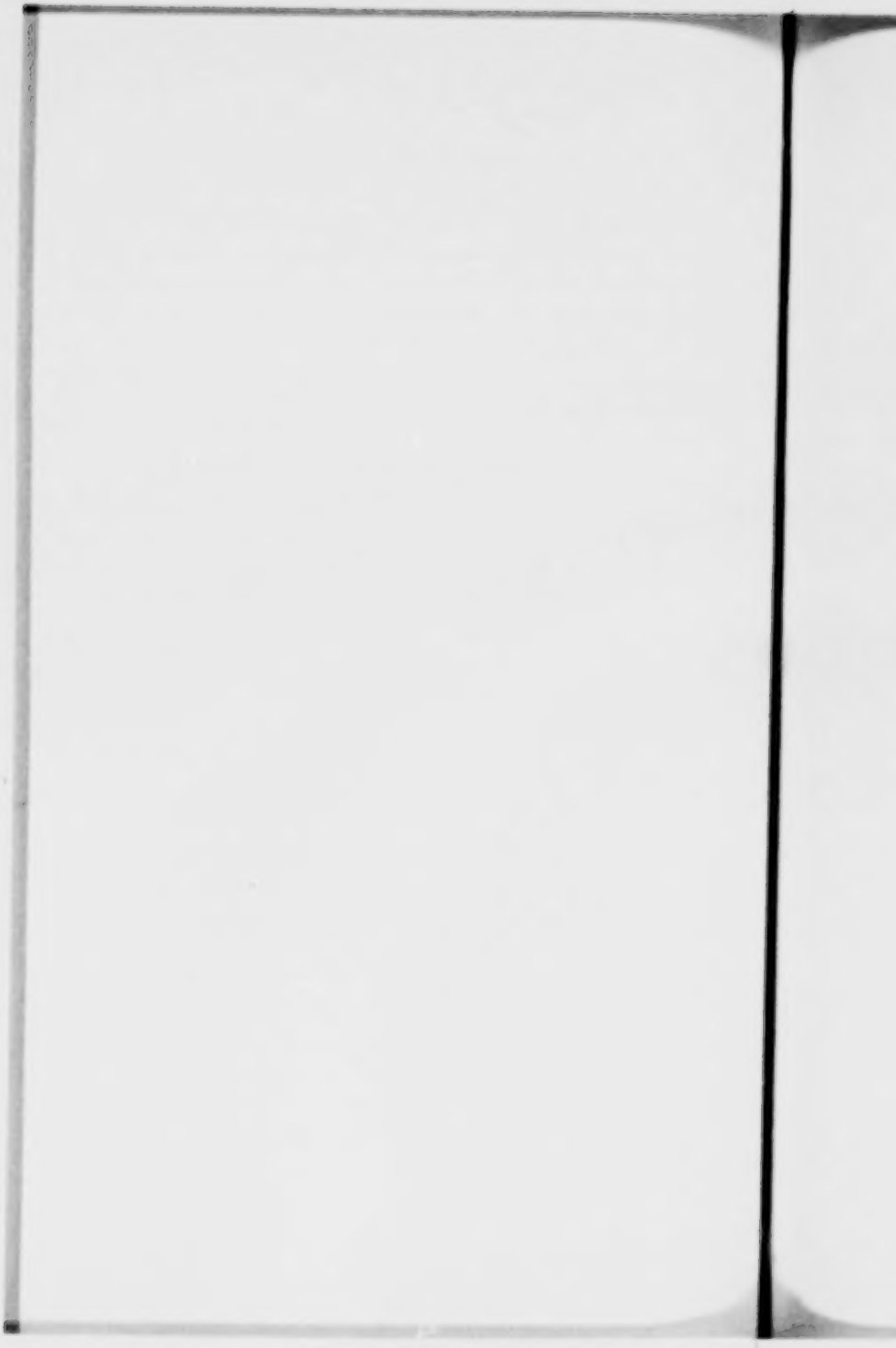

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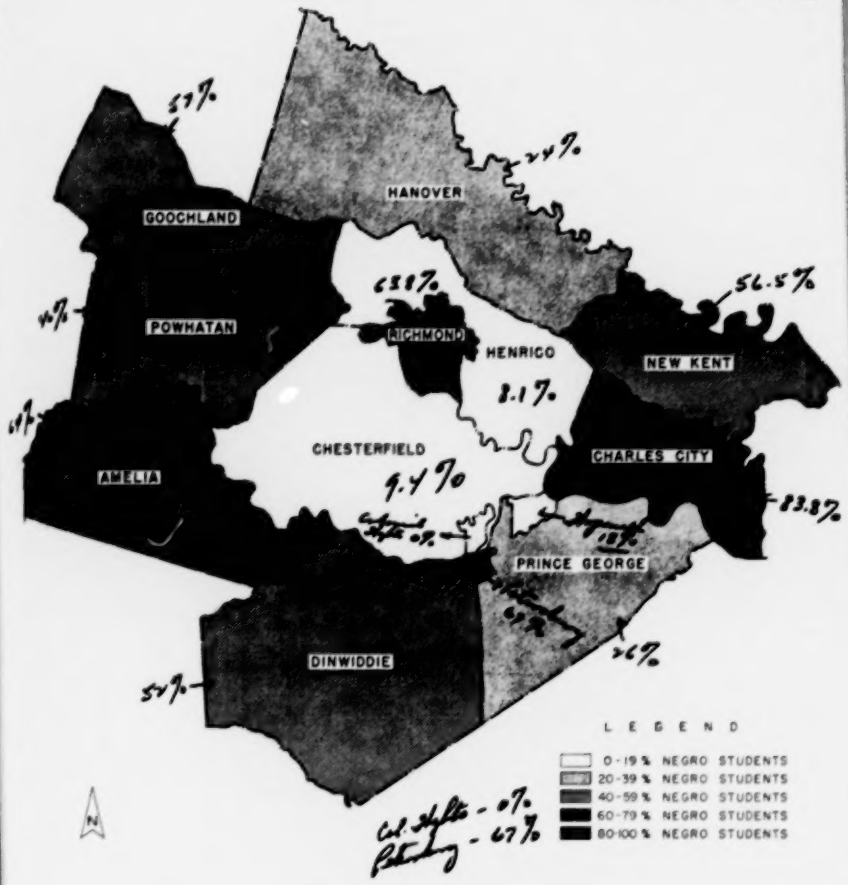
ADDENDUM "A"

CITY EXHIBIT NO. 52



NEGRO COMPOSITION OF AREA SCHOOL SYSTEMS

Richmond School Board
Exhibit No. 52A

Bradley vs. City of Richmond

TABLE 52A

NEGRO COMPOSITION OF AREA
SCHOOL SYSTEMS 1970-71

	Percent Negro Students
Amelia County	64.0
Charles City County	83.8
Chesterfield County	9.4
Colonial Heights	0
Dinwiddie County	52.0
Goochland County	57.0
Hanover County	24.0
Henrico County	8.1
Hopewell	18.0
New Kent County	56.5
Petersburg	67.0
Powhatan County	40.0
Prince George County	26.0
RICHMOND	63.8

Source: Virginia State Board of Education
November 25, 1970

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